

House Study Bill 74 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON VANDER LINDEN)

A BILL FOR

1 An Act concerning the rights of parties to private construction
2 contracts and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **573B.1 Title.**

2 This chapter shall be known as the "*Iowa Fairness in Private*
3 *Construction Contracts Act*".

4 Sec. 2. NEW SECTION. **573B.2 Definitions.**

5 For the purposes of this chapter:

6 1. "*Construction*" means the same as defined in section
7 103A.3.

8 2. "*Contract*" means the same as defined in section 554.1201.

9 3. "*Contractor*" means a person or entity that engages in
10 the business of construction and has a contract with an owner
11 of the real property or with a trustee, agent, or spouse of
12 an owner. "*Contractor*" does not mean a person or entity who
13 provides architectural, landscape architectural, or engineering
14 design services.

15 4. "*Owner*" means the same as defined in section 103A.3.

16 5. "*Prime rate*" means the prime rate charged by banks
17 on short-term business loans, as determined by the board of
18 governors of the federal reserve system and published in the
19 federal reserve bulletin.

20 6. "*Private construction*" means construction of or on
21 private property.

22 7. "*Retainage*" means money earned by a contractor or
23 subcontractor but withheld to ensure proper performance by the
24 contractor or subcontractor.

25 8. "*Subcontractor*" means a person or entity that engages
26 in the business of construction, except a person or entity
27 entering into a contract directly with the owner of the real
28 property. "*Subcontractor*" does not mean a person or entity who
29 provides architectural, landscape architectural, or engineering
30 design services.

31 Sec. 3. NEW SECTION. **573B.3 Private construction contracts**
32 **— payment — provisions against public policy — failure to pay.**

33 1. A person or entity that enters into a contract for
34 private construction shall make all payments pursuant to the
35 terms of the contract and in accordance with this chapter.

1 2. A provision in a contract for private construction
2 that purports to waive, release, or extinguish the right to
3 resolve disputes through litigation in court or substantive or
4 procedural rights in connection with such litigation is void
5 and unenforceable as contrary to public policy.

6 3. A provision in a contract for private construction
7 providing that a payment from a contractor or subcontractor
8 to a subcontractor is contingent or conditioned upon receipt
9 of a payment from any other private party is no defense to a
10 claim to enforce a mechanic's lien or bond to secure payment of
11 claims pursuant to chapter 572.

12 4. A contract for private construction shall provide that
13 payment of amounts due a contractor from an owner, except
14 retainage, shall be made within thirty days after the owner
15 receives a timely, properly completed, undisputed request for
16 payment. If an owner fails to pay a contractor by the date
17 payment is due, the owner shall pay interest to the contractor
18 beginning on the first business day after payment is due,
19 computed at the prime rate plus one percent per year.

20 5. For a contract for private construction, a contractor
21 shall pay a subcontractor any amounts due within ten business
22 days of whichever of the following is later:

23 a. Receipt of payment by the contractor from the owner,
24 including payment of retainage, if retainage is released by the
25 owner.

26 b. The date payment to the subcontractor is due pursuant to
27 the contract.

28 6. If a contractor fails to pay a subcontractor pursuant
29 to subsection 5, the contractor shall pay interest to the
30 subcontractor beginning on the first business day after payment
31 becomes due, computed at the prime rate plus one percent per
32 year.

33 7. The provisions of subsections 5 and 6 shall apply to a
34 payment from a subcontractor to its subcontractor.

35 Sec. 4. NEW SECTION. **573B.4 Retainage.**

1 1. An owner, contractor, or subcontractor may withhold
2 no more than five percent retainage from the amount of any
3 undisputed payment due.

2. If an owner, contractor, or subcontractor fails to pay retainage pursuant to the terms of a contract for private construction or as required by this chapter, the owner, contractor, or subcontractor shall pay interest to the contractor or subcontractor to whom payment was due, beginning on the first business day after the payment was due, at the prime rate plus one percent per year.

11 Sec. 5. NEW SECTION. 573B.5 Action or arbitration to
12 **enforce.**

Venue of any action to enforce the provisions of this chapter, including arbitration, shall be in the county where the applicable real property is located. The hearing in such an arbitration shall be held in the county where the applicable real property is located.

18 Sec. 6. NEW SECTION. 573B.6 Waiver or variance prohibited.

19 The rights and duties prescribed by this chapter shall not be
20 waived or varied under the terms of a contract. The terms of a
21 contract waiving or varying the rights and duties prescribed by
22 this chapter shall be unenforceable.

23 Sec. 7. NEW SECTION. 573B.7 Applicability.

24 The provisions of this chapter shall not apply to
25 single-family residential housing and multifamily residential
26 housing of four units or less. The provisions of this chapter
27 shall not apply to public works, a public utility as defined in
28 section 476.1, or public improvement projects.

29 Sec. 8. APPLICABILITY. This Act applies to construction
30 contracts entered into on or after the effective date of this
31 Act.

32 EXPLANATION

33 The inclusion of this explanation does not constitute agreement with
34 the explanation's substance by the members of the general assembly.

35 This bill creates the “Iowa fairness in private construction

1 contracts Act". The bill requires a person or entity that
2 enters into a contract for private construction to make
3 all payments pursuant to the terms of the contract and in
4 accordance with the bill. The bill provides that a provision
5 in a private construction contract that waives, releases, or
6 extinguishes the right to resolve disputes through litigation
7 is void as contrary to public policy.

8 The bill provides that a provision in a contract for
9 private construction making a payment from a contractor or
10 subcontractor to a subcontractor contingent or conditioned upon
11 receipt of a payment from any other private party is no defense
12 to a claim to enforce a mechanic's lien or bond to secure
13 payment of claims pursuant to Code chapter 572.

14 The bill requires that a contract for private construction
15 provide that payment of amounts due a contractor from an owner,
16 except retainage, shall be made within 30 days after the owner
17 receives a timely, properly completed, undisputed request for
18 payment. The bill provides that if an owner fails to pay a
19 contractor by the date payment is due, the owner must pay
20 interest to the contractor beginning the first business day
21 after payment is due, at the prime rate plus 1 percent per
22 year.

23 The bill provides that for a contract for private
24 construction, a contractor must pay a subcontractor any
25 amounts due within 10 business days of the later of either
26 the receipt of payment by the contractor from the owner,
27 including retainage, if released, or the date payment to the
28 subcontractor is due pursuant to the contract. The bill
29 provides that if a contractor fails to pay a subcontractor in
30 this way, the contractor must pay interest to the subcontractor
31 beginning the first business day after payment is due, at the
32 prime rate plus 1 percent per year.

33 The bill defines "retainage" for the purposes of the "Iowa
34 fairness in private construction contracts Act" as money
35 earned by a contractor or subcontractor but withheld to ensure

1 proper performance by the contractor or subcontractor. The
2 bill provides that an owner, contractor, or subcontractor may
3 withhold no more than 5 percent retainage from the amount of
4 any undisputed payment due. The bill provides that if an
5 owner, contractor, or subcontractor fails to pay retainage
6 as required, they must pay interest beginning on the first
7 business day after the payment was due, at the prime rate plus
8 1 percent per year.

9 The bill provides that any action to enforce the provisions
10 of the bill, including arbitration, will take place in the
11 county where the applicable real property is located.

12 The bill provides that the rights and duties prescribed
13 by the bill cannot be waived or varied under the terms
14 of a contract, and a provision of a contract doing so is
15 unenforceable.

16 The bill does not apply to single-family residential housing
17 and multifamily residential housing of four units or less or
18 public works, a public utility, or public improvement projects.

19 The bill applies to construction contracts entered into on
20 or after the effective date of the bill.